



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 5, 2003

Mr. Blake G. Powell
Powell & Leon, L.L.P.
1706 West Sixth Street
Austin, Texas 78703-4703

OR2003-3004

Dear Mr. Powell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180460.

The Bartlett Independent School District (the "district"), which you represent, received a request for information relating to meetings of the district's board of trustees that involved a determination that a financial exigency exists in the district or recommendations that employees within an affected employment area be terminated, non-renewed, or suspended without pay because of a financial exigency and/or reduction in force; policies of the district and board that deal with the termination, non-renewal, and suspension without pay of a term contract employee or with a financial exigency and reduction in force; an "affected employment area" applicable to a named individual; other employees in that "affected employment area"; building principals and administrators in the district; employees proposed for termination and/or non-renewal and/or suspended without pay; the basis for the district's determination that a financial exigency exists; and the criteria utilized to determine which district employees should be terminated, non-renewed, and/or suspended without pay because of a financial exigency or reduction in force. You indicate that the district will make some of the requested information available to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code.

We begin by noting that the district has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part that a governmental body that requests a decision must submit to the attorney general, not later than the 15th business day after the date of its receipt of the written request for information, a copy of the specific information requested or representative samples if a voluminous amount of

information was requested. *See* Gov't Code § 552.301(e)(1)(D). Section 552.302 provides that if a governmental body does not request an attorney general decision as provided by section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

This office has not received either the requested information or samples of the information that the district seeks to withhold. Thus, the district has not complied with section 552.301 of the Government Code in requesting this decision.¹ Therefore, the information in question is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.103, which you claim, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. This exception does not make information confidential by law or protect third-party interests. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived). Thus, section 552.103 does not constitute a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301, the district has waived its claim for an exception to disclosure under section 552.103. *See also* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, the district must release the rest of the requested information in accordance with section 552.302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

¹We note that the provision of an itemized estimate of charges to a requestor under section 552.2615 of the Government Code does not excuse a governmental body from complying with its deadlines under section 552.301. *See* Gov't Code § 552.2615(g) (deadlines imposed by Gov't Code § 552.2615 do not affect application of time deadline imposed on governmental body under Gov't Code subch. G).

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

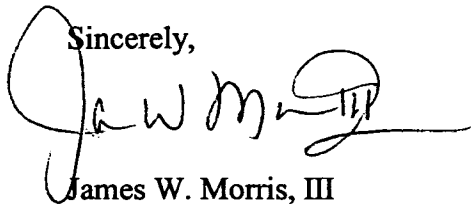
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 180460

Enc: Submitted documents

c: Mr. Shane Goetz
Rossetti and Goetz
715 West Abram Street
Arlington, Texas 76013
(w/o enclosures)